IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3762 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL LALJIBHAI THAKKER - Petitioner(s)
Versus
COLLECTOR, GANDHINAGAR & ANR. - Respondent(s)

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Appearance :
SHRI R.C. JANI for Petitioner(s).
SHRI L.R. PUJARI, ASST. GOVERNMENT PLEADER for Respondent(s):1 & 3.
None for Respondent(s) : 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/12/2006

ORAL JUDGMENT

1. The short facts of the case are that an allotment of plot was made for commercial use in favour of one Ambalal Sankalchand Modi, a partner of M/s.Ambalal

Sankalchand Modi, with certain conditions. The terms and conditions to which the said Ambalal Modi agreed and consented are in the document dated 7th June, 1973 (Annexure-A). Certain conditions were that the person, in whose favour the plot has been allotted, shall make minimum construction, as required under the law, and without change of the user, such person desirous of transfer, could make a transfer. Said Ambalal started construction, but, before he could conclude the construction or obtain Completion/Occupancy Certificate, he died on 1st March, 1976. The construction remained unfinished, but, after some time, the successors/legal representatives of the said Ambalal transferred the said plot in favour of the present petitioner – Ramanlal Laljibhai Thakker. It appears that after learning about the transfer of the plot and breach of the conditions, the Collector, Gandhinagar issued a notice to the successors of Ambalal to show cause as to why the allotment of plot be not cancelled. Smt.Dahiben, widow of Ambalal Modi, and Rajnikant, son of the said Ambalal Modi, submitted their replies to the notice. They submitted that the construction remained incomplete because of the death of Ambalal and under the compelling circumstances, they were required to transfer the construction along with the plot on 9th October, 1978.

They also pleaded that they had no knowledge of the terms of allotment or the covenants to which Ambalal had agreed. They submitted that if there was any illegal construction, they were ready and willing to dismantle/demolish the same. The Collector, after taking into consideration the totality of the circumstances and effect of Conditions Nos.2, 3, 5 and 7, observed that the transfer made by the successors of Ambalal Modi was contrary to the terms of allotment. He, accordingly, cancelled the allotment.

2. According to the petitioner (the subsequent purchaser) he was served with a copy of the order passed by the Collector and immediately thereafter, he made a representation to the Collector, but, the Collector required him to make a representation/file an appeal to the competent authority.

3. It appears that the petitioner, accordingly, filed an appeal, it was heard and decided by the Secretary, Revenue Department (Disputes/Appeals), who, by his order dated 30th April, 1984, confirmed the order passed by the Collector and dismissed the appeal. Being aggrieved by the orders passed by the Collector and the Secretary, the petitioner is before this Court.

4. Shri Jani, learned Counsel for the petitioner, submits that Condition No.5 simply provided that if some minimum construction is made, then, there would be no ban on transfer and undisputedly, in the present matter, some construction was raised, therefore, it could not be held that there was violation of Condition No.5.

He also submitted that the authorities have power to grant *post facto* sanction or validate the illegal transfer. According to him, present is a case where for small lapses, the allotment could not have been cancelled.

5. Shri Pujari, learned Counsel for the State, submits that the orders passed by the Authorities are in accordance with law.

6. Condition No.5 does not talk of some construction, it talks of minimum construction as required under the Building By-laws. The minimum construction may be construction of a room or something else, but, after making such construction, the allottee would be required to obtain Completion/Occupancy Certificate. Unless he obtains the Completion Certificate from the authorities competent to grant building use

permission, it would not be possible to hold that the construction was complete, it was the minimum as required under the law and was a valid construction. Undisputedly, the construction was incomplete on the date of death of the allottee-Ambalal. It is also not in dispute and even otherwise, it could not be contended that complete construction was made and thereafter, the property was transferred in favour of the present petitioner. The defence of the successors of Ambalal clearly shows that the construction was incomplete and under the compelling circumstances, they were required to transfer the property. If these are the admissions and those are the facts floating on the surface of the records, then, it cannot be said that the Authorities committed any illegality in exercising their powers. So far as the question of *post facto* sanction or validation of the illegal act is concerned, such pleadings cannot be considered in this proceeding because from the orders passed by the Collector or the Secretary, it does not appear that such submissions were made before them or they were required to exercise the powers vested in them (if any). I do not find any reason to interfere with the orders passed by the Collector/Secretary. The petition deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, granted earlier is

vacated. No costs.

7. At the request of Shri Jani, it is, however, made clear that if law permits the petitioner or the successors of Ambalal Modi to make an application to the competent authority to grant *post facto* sanction or issue an order of validation, validating the illegal transfer, these persons would be free to make such application to such authorities, who are entitled to hear and decide the matter.

[R.S.Garg, J.]

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